

² Docket No. 14-1845 (issued December 29, 2014).

April 22, 1996 appellant, then a 35-year-old letter sorting machine operator, filed a traumatic injury claim (Form CA-1) alleging that on April 10, 1996 she sustained left arm injuries when a machine door fell open and struck her on the arm. OWCP accepted the claim for left upper arm contusion, left rotator cuff sprain, and left shoulder dislocation. Appellant returned to work in a light-duty position. The record indicates that the light-duty job was withdrawn pursuant to the National Reassessment Process, and appellant began receiving wage-loss compensation as of September 21, 2010.

OWCP found that a conflict in the medical evidence existed with respect to causal relationship between a cervical condition and the employment injury. An attending physician, Dr. Alfredo Sardinias, a Board-certified orthopedic surgeon, opined in a report dated October 26, 2010 that both the left shoulder and the cervical spine were injured in the employment injury. He noted that the impact caused appellant's neck to turn rapidly causing a flexion and extension injury. Dr. Sardinias indicated that appellant complained of neck pain on September 13, 1996 when initially treated. He noted that appellant suffered a herniated cervical disc as a result of the employment injury.

In a report dated March 5, 2013, an OWCP medical adviser opined that appellant's cervical condition was not employment related. The medical adviser indicated that a February 12, 1997 magnetic resonance imaging (MRI) scan showed no evidence of a disc herniation, and there was no evidence of cervical radiculopathy on a March 22, 2002 electromyogram and nerve conduction velocity studies. According to the medical adviser, C4-5 and C5-6 disc herniations did not appear until a July 27, 2005 MRI scan.

A February 3, 2014 statement of accepted facts was prepared and appellant was referred to Dr. Frank Barnes, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a report dated March 6, 2014, Dr. Barnes provided a history and results on examination. He diagnosed cervical degenerative disc disease. Dr. Barnes opined that the cervical condition was not related to the accepted work injury. He indicated that appellant's cervical condition did not arise until several years after her injury and this was confirmed by the treatment notes and lack of treatment directed to her neck by treating physicians.

By decision dated June 18, 2014, OWCP determined that the evidence was insufficient to establish a cervical condition causally related to the April 10, 1996 employment injury. In a December 29, 2014 decision, affirming the June 18, 2014 decision, the Board found that Dr. Barnes' report represented the weight of the medical evidence. It was noted that counsel at that time had argued that the statement of accepted facts did not disclose that appellant had complained of neck pain after the April 10, 1996 injury, that Dr. Barnes was not properly selected, and that did not resolve the conflict. The Board found that Dr. Barnes was provided a complete and accurate background, was properly selected as a referee physician, and provided a rationalized medical opinion that resolved the conflict.

On December 17, 2015 OWCP received a letter of the same date from counsel requesting reconsideration. Counsel reviewed the history of the case and reiterated the argument that the evidence from Dr. Barnes was insufficient to resolve the conflict. He again argued that the statement of accepted facts was incomplete and the opinion of Dr. Barnes was not based on a complete background. With respect to the evidence, appellant submitted photographs of the

work area where she alleged that the April 22, 1996 employment injury occurred. She resubmitted medical evidence of record, including cervical MRI scans dated February 12, 1997 and July 27, 2005, an October 26, 2010 report from Dr. Sardinas, and the March 6, 2014 report from Dr. Barnes. Appellant also submitted a February 3, 2015 cervical x-ray report from Dr. Lorenzo Farolan, a radiologist, diagnosing straightening of the cervical lordotic curve consistent with muscle spasms and osteophytes at C3-7.

By decision dated February 4, 2016, OWCP reviewed the merits of the claim. It found that the evidence submitted was insufficient to warrant modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty, and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS

As the factual history indicates, the case has previously been before the Board on a prior appeal. The Board reviewed the evidence that was before OWCP at the time of the June 18, 2014 decision. As the Board explained in its December 29, 2014 decision, the weight of the evidence was represented by Dr. Barnes and OWCP properly declined to accept a cervical condition. It was noted that appellant had raised the issue of the statement of accepted facts, but the Board found Dr. Barnes had a complete background on which to base his opinion. The Board will not review evidence and argument that was previously addressed in its prior decision. With respect to the findings made in the Board's December 29, 2014 decision, those matters are *res judicata* absent any further review by OWCP.⁶

The new evidence submitted on reconsideration were pictures of the accident site and a February 3, 2015 cervical x-ray diagnosing straightening of the cervical lordotic curve consistent with muscle spasms and osteophytes at C3-7. This evidence is insufficient to establish a cervical condition causally related to the April 10, 1996 employment injury. The issue is a medical issue and there must be rationalized medical evidence establishing a diagnosed cervical condition

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁶ *See W.F.*, Docket No. 15-1208 (issued October 23, 2015); *see also Robert G. Burns*, 57 ECAB 657 (2006).

causally related to the employment injury. The cervical x-ray does not provide probative medical evidence on this issue.

It is appellant's burden of proof to establish that the diagnosed cervical condition is causally related to the accepted employment injury. Based on the evidence of record, appellant has not met her burden of proof in this case.

On appeal appellant argues that the pictures and medical evidence of record are sufficient to establish her claim. For the reasons noted, the Board finds she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established a cervical condition causally related to her April 10, 1996 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 4, 2016 is affirmed.

Issued: July 19, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board